

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

YESNER JIMENEZ

vs.

CVS PHARMACY, INC.,
Defendant.

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Case No.: 1:21-cv-10716

NOTICE OF REMOVAL

TO: The Chief Judge and Judges of the United States District Court for the District of Massachusetts

The Defendant, CVS Pharmacy, Inc. ("CVS"), hereby files this Notice of Removal of the above-captioned matter from the Suffolk County Superior Court, Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts (Eastern Division), pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 of the United States Code. In support of its Notice of Removal, CVS states as follows:

INTRODUCTION

1. On or about March 24, 2021, the Plaintiff, Yesner Jimenez, filed an action against CVS in the Trial Court of the Commonwealth of Massachusetts, Superior Court Department, Suffolk County ("the State Court Action").

2. By his lawsuit, the Plaintiff seeks damages for bodily injuries allegedly sustained while upon the premises located at 624 Massachusetts Avenue in Cambridge, Massachusetts.

3. A copy of the Complaint, Civil Action Cover Sheet and Summons, served on CVS, is attached hereto as Exhibit A.

4. The underlying action is one in which this Court has original jurisdiction under 28 U.S.C. § 1332 and which may be removed to this Court by CVS pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00.

TIMELINESS OF REMOVAL

5. CVS was served with the foregoing pleadings on April 13, 2021. See Return of Service attached hereto as Exhibit B.

6. Accordingly, removal is timely under 28 U.S.C. §1446(b), because CVS filed such removal within thirty (30) days of receipt of the Summons and Complaint. 28 U.S.C. § 1446(b)(2)(B) and (C); Murphy Bros.v. Michetti Pipe Stringing, Inc., 526 U.S. 344 (1999).

DIVERSITY OF CITIZENSHIP

7. The Plaintiff identifies himself a resident of Middlesex County, Massachusetts,. Exhibit A, Complaint at ¶ 1.

8. CVS Pharmacy, Inc. is a corporation organized and existing under the laws of the State of Rhode Island, with its principal place of business located at One CVS Drive in Woonsocket, Rhode Island. Exhibit A, Complaint at ¶ 2.

9. Accordingly, complete diversity of citizenship exists under 28 U.S.C. § 1332.

AMOUNT IN CONTROVERSY

10. The amount in controversy is believed to exceed \$75,000.00, exclusive of interest and costs.

11. The Plaintiff alleges that, as a result of the Defendant's alleged negligence, the Plaintiff "sustained serious and permanent personal injuries, great pain and suffering, mental anguish, lost wages and/or diminished earning capacity as well as past, present and future medical expenses." Exhibit A, Complaint at ¶9. More specifically, he claims to have sustained a right knee meniscal tear that required surgical intervention. See Exhibit A, Civil Action Cover Sheet.

12. In light of the amount of the foregoing, the amount in controversy exceeds \$75,000.00. Where the Plaintiff has not pled a specific amount of damages in the Complaint, the amount in controversy requirement is satisfied when CVS has shown by a preponderance of the evidence that the amount in controversy exceeds \$75,000.00. 28 U.S.C. § 1446(c)(2)(B).

VENUE

13. This action is removable to this Court pursuant to 28 U.S.C. § 1441(a) because the Eastern Division of the United States District Court for the District of Massachusetts embraces the place (Suffolk, Massachusetts) where the state action is now pending and the place (Cambridge, Massachusetts) where the Plaintiff claims his injuries are alleged to have occurred.

NOTICE OF REMOVAL

14. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be filed with the Clerk of the Suffolk County Superior Court and provided to counsel of record for the Plaintiff. A copy of the Notice of Filing Notice of Removal filed with the Suffolk County Superior Court is attached hereto as Exhibit C.

STATE COURT RECORD

15. Certified or attested copies of all records and proceedings before the Suffolk County Superior Court will be filed with this Court within 28 days, in accordance with Local Rule 81.1 (D. Mass.).

16. In submitting this Notice of Removal, CVS reserves all defenses.

WHEREFORE, the Defendant, CVS Pharmacy Inc., hereby removes this action from the Suffolk County Superior Court to the Eastern Division of the United States District Court for the District of Massachusetts.

Respectfully submitted,

**THE DEFENDANT,
CVS PHARMACY, INC.**

By its attorneys,

/s/ Young B. Han

Adam G. Cohen, BBO No. 558689

Young B. Han, BBO No. 664126

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Dated: April 29, 2021

CERTIFICATE OF SERVICE

I, Young B. Han, hereby certify that a true copy of the above document was served via electronic mail, pursuant to Supreme Judicial Court Order OE-144, on this 29th day of April, 2021, upon all counsel of record below:

For the Plaintiff:
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/s/ Young B. Han

Young B. Han